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EVIDENCE—ADMISSIONS OF A TRUSTEE AGAINST THE CESTUI QUE TRUST.—

In a contest between attaching creditors and a mortgagee to secure the property of the debtor, evidence was introduced that the trustee of the mortgagee had admitted, in a conversation some time after taking the mortgage, that at the time of taking it he had knowledge that the attachment proceedings were already begun. *Held*, that the trustee under the mortgage, himself a party to the action, was not authorized to make admissions in derogation of the trust. *First Nat. Bank of Peoria et al. v. Farmers' and Merchants' Nat. Bank of Wabash et al.* (1908), — Ind. —, 84 N. E. 1077, reversing the decision of the Appellate Court, 82 N. E. 1013.

The old English rule was that the admissions of a trustee, provided he was a party to the record, might be introduced against the *cestui que* trust. 2 STARKIE ON EVIDENCE, 40; *Craig v. D'Aeth*, 7 T. R. 670 note; *Bauerman v. Radenius*, Id. 663. Moreover, there is some American authority for the doctrine that a trustee's admissions are competent evidence. Wigmore (EVIDENCE, § 1076) says that the admissions of the trustee "should be receivable." In *Beatty v. Davis*, 9 Gill. 211, an early Maryland case, it was held that the admissions of a party to the record are evidence, although he stands in the attitude of a trustee. In *Helm v. Steele*, 22 Tenn. 472, the admissions of a trustee, liable for costs in the suit, were received in evidence, the court saying that it could not be presumed that the trustee would make admissions adverse to the interest of the *cestui que* trust. The present case, however, would seem to be based on the better reasoning. A trustee holding the bare legal title has no beneficial interest and cannot be affected by any decision in regard to the property which he holds. Hence it would seem that he should not be empowered to admit the rights of his *cestui que* trust away. The doctrine of the present case is supported by the great majority of the American decisions. 1 ELLIOTT, EVIDENCE, § 262; *Graham v. Lockhart*, 8 Ala. 9; *Thompson v. Drake*, 32 Ala. 99; *Fargason v. Edrington*, 49 Ark. 207; *Eitelgeorge v. The Mutual House Building Association*, 69 Mo. 52; *Thomas v. Bowman*, 29 Ill. 426; *Reed v. Beardsley*, 6 Neb. 493; *Caldwell's Ex'r. v. Prindle's Adm'r.*, 19 W. Va. 604.

EVIDENCE—JUDICIAL NOTICE OF FOREIGN LAW.—In a suit arising from a dispute as to the ownership of church property, and the status of the Roman Catholic Church in Porto Rico, *held*, that the Federal Supreme Court will take judicial notice of the law of Spain so far as it affected the insular possessions of the United States. *Municipality of Ponce, Abpt., v. Roman Catholic Apostolic Church in Porto Rico* (1908), 210 U. S. 296, 28 Sup. Ct. 737.

The general rule is well established that a court will not take judicial notice of foreign law. WIGMORE, EVIDENCE, § 2573; *Dainese v. Hale*, 91 U. S. 13; *Liverpool Steam Co. v. Phenix Ins. Co.*, 129 U. S. 397. Previous cases, however, have announced the exception which the present case follows. In *United States v. Philadelphia and New Orleans*, 52 U. S. (11 How.) 609; *United States v. Turner*, Id. 663; *Malpica v. McKown*, 1 La. 248; *Doe ex. dem. Farmer's Heirs v. Eslava*, 11 Ala. 1028, and *Ott v.*

Soulard, 9 Mo. 573, cases involving the validity of Spanish land grants [in Louisiana, Alabama and Missouri, it was held proper for the courts to take judicial notice of the Spanish law prevailing in those localities before their acquisition by the United States. Similar decisions were made in *Fremont v. United States*, 58 U. S. (17 How.) 542; *United States v. Chaves*, 159 U. S. 452, and *Wells v. Stout*, 9 Cal. 480, cases involving the validity of land grants] made under the Mexican law. The preceding cases were decided upon the theory that the laws of which judicial notice were taken were not foreign, but those of an antecedent government. Louisiana in two early cases, *Arayo v. Currell*, 1 La. 528, and *Berluchaux v. Berluchaux et al.*, 7 La. 539, carried this doctrine still further, holding it to be proper, in deciding cases involving the law of Mexico and Cuba respectively, to take judicial notice of the laws of those countries, in that the law of Spanish America had formerly been the law of Louisiana, the court presuming that no change had been made since that time. The doctrine of these early Louisiana cases, however, has apparently never been adopted in any other state.

HOMESTEAD—MORTGAGE OF AFTER ACQUIRED PROPERTY.—A man and his wife executed a mortgage which contained a clause including all after acquired property within the terms of the mortgage. Subsequently they acquired property which, ordinarily, would have been exempt from sale for debt under the homestead laws. Foreclosure was prayed against the property which was owned at the time of the execution of the mortgage and against the after acquired property. *Held*, a husband and wife may execute a valid mortgage on after acquired property even though such property, when acquired, shall be used or appropriated as homestead property. *Addinson & Bacot Co. v. Varnado et al* (1908), — Miss. —, 47 South. 113.

Chief Justice WHITFIELD in the majority opinion said it was admitted that defendants could have mortgaged homestead property at the time of the execution of the mortgage, and that public policy was no more infringed by allowing them to mortgage future homestead property than by allowing them to mortgage present homestead property. A strong dissenting opinion was rendered by MAYES, J., in which he said that the effect of the mortgage was to waive exemption right and against public policy. CALHOUN, J., while concurring with WHITFIELD, Ch. J., said the legislature should pass a law making any mortgage of after acquired homestead property void. We think this is the first time this exact point has been before a supreme court, but an agreement that all the debtor's property shall be subject to levy and sale, contained in a promissory note, is inoperative as against the policy of the exemption laws. *Carter's Administrators v. Carter et al.*, 20 Fla. 558; *Mills v. Bennett*, 94 Tenn. 651; *Curtis v. O'Brien & Sears*, 20 Iowa 376, 80 Am. Dec. 543. "A covenant in a contract whereby the promisor agrees in advance to waive his rights of exemption, generally, is void in most jurisdictions, on the theory that the statute is enacted for the protection of necessitous debtors, and to allow them to contract away their